DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
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CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

Medicaid and CHIP Operations Group

March 13, 2024

Susan Birch, HCA Director and Interim Medicaid Director
Health Care Authority
PO Box 45502
Olympia, WA 98504-5010

Dear Director Birch,

The Centers for Medicare and Medicaid Services (CMS) is pleased to enclose the summary report of the Health and Welfare Site Review (H&W SR) team visit to Washington in September 2023. The final summary report is being reissued with feedback from the state included, which CMS received on February 14, 2024.

The focus of the visit was to learn more about your health and welfare operations and systems within your home and community-based services (HCBS) offerings in the state. We appreciated the hard work of your team to arrange meetings with state staff, individuals receiving HCBS services, advocates, case managers, service providers, and other interested parties. Additionally, your team provided extensive information regarding incident management and other health and welfare documentation before and during our visit.

If you have any questions about the enclosed report, please feel free to contact me by telephone at (206) 615-3814. You may also contact Nick Sukachevin at Nickom.Sukachevin@cms.hhs.gov or at (206) 615-2416.

Sincerely,

[redacted]

Wendy Hill Petras, Deputy Director
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Washington Health and Welfare Site Review Summary Report

March 13, 2024

I. Executive Summary

The Health and Welfare Site Review (H&W SR) was conducted by the Centers for Medicare & Medicaid Services, Division of Home and Community Based Services Operations & Oversight (DHCBSO) in coordination with the Administration for Community Living (ACL). The H&W SR was conducted during a six-day focused review of Washington's Medicaid Home and Community-Based Services (HCBS) waiver programs on September 18, 2023, September 26 through September 29, 2023, and October 6, 2023. The on-site and virtual review included multiple meetings with state leadership and staff responsible for the administration and operation of Washington's eight 1915(c) waivers, including staff from the Health Care Authority (HCA), the Developmental Disabilities Administration (DDA), and Aging and Long-Term Support Administration (ALTSA). The H&W SR team also held meetings with representatives from Washington's licensing entity, protective services entities, the Developmental Disabilities (DD) Ombuds and Long-Term Care Ombuds (LTCO), supports planners, case managers, providers, participants, advocacy organizations, and other stakeholders. The focus of these meetings was to understand how the process for reporting, investigating, and resolving critical incidents operates in practice and how health and welfare is assured for HCBS participants in Washington through the lens of these stakeholders. This on-site and virtual review was conducted as part of a national initiative to provide individualized technical assistance to states on maximizing the health and welfare of Medicaid beneficiaries, and to identify both promising practices and challenges to address.

The HCA retains administrative authority over Washington's eight 1915(c) waiver programs. Of the eight waiver programs, DDA is the operating agency for five and ALTSA is the operating agency for three. To address this, the H&W SR team focused on the Core and Community Protection Waiver programs operated by DDA and the Community Options Program Entry System (COPES) and Residential Support Waiver (RSW) programs operated by ALTSA.

During the site review, the H&W SR team identified several strengths and promising practices, along with challenges, which are listed here and summarized more fully later in this report.

Strengths and Promising Practices for Ensuring Health and Welfare

- Multisystem integration and sharing of information across agencies
- Comprehensive Assessment Reporting and Evaluation (CARE) tool includes several sections where safety-related information is documented
- Well-developed policies, protocols, and procedures to report and investigate incidents
- Robust intake process including if the report contains an allegation of abuse, neglect, financial exploitation or concerns regarding care and services
- Program and cross-agency collaboration among Adult Protective Services (APS), Residential Care Services (RCS), HCA, and the operating agencies for the 1915(c) and 1115 HCBS programs
- Focus on reducing the length of hospital stays
- Mortality review processes for both the DDA and ALTSA populations

- Best practices developed by providers

Challenges

- Lack of knowledge on how to report incidents for some stakeholders and participants
- Participant and stakeholder concerns about participant protections during incident investigations
- Delays in remediating incidents
- Backlog of identified licensing incidents
- Undefined protocol for suspicious deaths in licensed settings
- Concerns raised by the DD and LTC Ombuds regarding issues related to hospitalization of participants for extended periods of time
- Concerns raised by the DD Ombuds regarding the Community Protection Program

Washington has clearly invested in an administrative structure and processes that will assure the health and welfare of individuals and is continually looking for ways to strengthen it.

II. Background

Before the site visit, the H&W SR team reviewed waiver program documents and other materials related to the health and welfare assurance of individuals receiving HCBS in Washington. See Attachment A for a full list of Washington's HCBS programs.

Table 1 includes information about the four Washington waiver programs that were the focus of the visit.

Table 1

Waiver Name and Number	Expiration Date	Operating Agency	Target Population
Community Options Program Entry System (COPES) (WA 0049)	December 2028	Aging and Long-Term Support Administration (ALTSA)	Participants who are age 18-64 who have physical or other disabilities and older adults aged 65 and over
Residential Support Waiver (RSW) (WA 1086)	December 2028	Aging and Long-Term Support Administration (ALTSA)	Participants who are age 18-64 who have physical or other disabilities and older adults aged 65 and over
Core (WA 0410)	August 2027	Developmental Disabilities Administration (DDA)	Participants of any age with intellectual disabilities, developmental disabilities, or autism
Community Protection (WA 0411)	August 2027	Developmental Disabilities Administration (DDA)	Participants who are aged 18 and over with intellectual disabilities, developmental disabilities, or autism

The Medicaid Single State Agency, Washington Health Care Authority (HCA), is responsible for approving rules, regulations and policies that govern how waivers are operated and retains the authority to discharge its responsibilities for the administration of the Medicaid program pursuant to 42 CFR §431.10(e). The DDA within the Department of Social and Health Services (DSHS), is the Operating Agency and is responsible for managing the Core and Community Protection waivers. The DDA monitors against waiver requirements for all services delivered.

The COPES and Residential Support waivers are administered by DSHS through ALTSA. The state determines initial financial and functional eligibility for services. For the COPES waiver, ongoing case management for in-home participants is provided by local Area Agencies on Aging (AAA). For the Residential Support Waiver, residential case management is provided by ALTSA's local Home and Community Services (HCS) offices.

The **COPES waiver** provides home and community-based services targeted to Medicaid eligible older adults 65 and over as well as individuals with disabilities age 18-64 who are at a nursing facility level of care and meet financial eligibility requirements. The waiver serves up to 56,644 individuals per year and provides services for individuals who reside in private residences or licensed residential settings. The goal of this waiver is to support participants to live in the community setting of their choice rather than in a nursing facility or other more restrictive settings. The objective of the waiver is to develop and implement supports and services to successfully maintain individuals in their homes and communities.

The **Residential Support Waiver** provides supports and services in licensed community residential settings to participants who are age 18-64 with physical or other disabilities and older adults aged 65 and over who are eligible for nursing facility level of care and have the need for enhanced residential services. The waiver serves up to 4,357 participants and provides supports and services that include behavioral supports, personal care assistance, and supervision related to mental health disorders, chemical dependency disorders, traumatic brain injuries and/or cognitive impairments. The goal of the waiver is to provide residential supports and other services needed by participants to successfully live in the community as an alternative to institutional care.

The **Core waiver** provides an alternative to Intermediate Care Facility for Individuals with Intellectual Disability (ICF/IID) placement for individuals with intellectual or developmental disabilities and autism who require residential habilitation services or live at home but are at immediate risk of out of home placement. The waiver serves up to 6,000 participants. The goal of the Core waiver is to support individuals who require the level of care provided in an ICF/IID and choose to live in the community. The objective of the Core waiver is to develop and implement supports and services to successfully maintain individuals in their homes and communities.

The **Community Protection waiver** provides an alternative to ICF/IID placement for participants who are aged 18 and over with intellectual disabilities, developmental disabilities, or autism who have a history of violent, stalking, sexually violent, predatory, and/or opportunistic behavior or have been charged with a crime involving violent crime or inappropriate sexual behavior. The goal of the Community Protection Waiver is to provide services to assist clients with gaining the safety skills necessary to be successful and engaged members of their community and to reach the goals identified in their person-centered service plan. The waiver serves participants and provides a structured, habilitative environment for persons who have

community protection issues and require 24-hour, on-site, awake staff supervision to ensure their safety for them to live successfully in the community while minimizing the risk to public safety.

The state provided CMS with additional information on 2/14/2024: The state noted that the number of individuals served in the waiver fluctuates and they are currently serving approximately 350 participants.

III. Washington On-Site and Virtual Review

The H&W SR team conducted on-site and virtual visits over a six-day period and met with various state staff, stakeholders, advocates, providers, and participants. The team also conducted on-site visits at provider sites and participants' homes as well as reviewing a sample of critical incident reports. The following topics were covered:

- Medicaid agency's oversight of the waiver programs and the critical incident management systems and processes from the perspectives of the Washington State Medicaid agency (HCA) and waiver operating agencies (DDA and ALTSA)
- Investigation processes of critical incidents and health and safety complaints
- Participant understanding of critical incident response, how to report a concern and awareness of their rights
- Critical incident reporting process from the provider and stakeholder/advocates perspectives
- Washington's mortality review process.

Two meetings with advocates, participants and stakeholders were held. One meeting was with the State LTC Ombudsman, long-term care facility residents and representatives. A separate meeting was held with developmental disability advocates and stakeholders, including representatives of the DD Council, the Protection & Advocacy System (Disability Rights Washington), the DD Ombuds and participants. The purpose was to obtain their perspectives on how the entities work together to assure the health and welfare of participants for the various waivers.

Separate meetings with the LTC Ombudsman and the DD Ombuds were also held.

IV. State Strengths and Promising Practices for Ensuring Health & Welfare

The following is an overview of the strengths and promising practices identified by the H&W SR team regarding the design or practice of ensuring the health and welfare of HCBS participants in Washington.

- **Multisystem integration** – The state has developed a system that demonstrates multisystem integration and a high level of collaboration in the following ways:
    - Comprehensive Assessment Reporting and Evaluation (CARE) tool is linked to the online portals for Adult Protective Services (APS), Residential Care Services (RCS), Tracking Incidents of Vulnerable Adults (TIVA2), and the Medicaid Management Information System (MMIS) for the purposes of payment
    - "No wrong door" approach to receiving complaints
    - Multiple ways to report an incident, by phone, on-line forms, e-mail, fax
    - Case management system also notifies the case manager if a waiver participant is identified.

- **CARE tool safety information –** The CARE tool documents a range of safety-related information about each participant including but not limited to the following:
    - Safety concerns that should be communicated to caregivers and a questionnaire to assess caregiver burnout
    - Potential for abuse and neglect (cues/reasons will display, such as *client's belongings are missing, indications client has been hurt*, etc.)
    - Environmental concerns (condition of the home, location, accessibility, fire safety)
    - Legal matters concerning the client (*registered sex offender, housing eviction, protection order*, etc.)
    - History of falls
    - Financial concerns (assistance getting a guardian or power of attorney, paying bills, or credit counseling).
- **Well-developed reporting policies, protocols, and procedures for incidents –** The state has well developed policies, protocols, and procedures to report and investigate incidents. The state has invested in technology that allows for real time reporting, sharing information across agencies conducting quality assurance oversight as well as trend analysis. There is a requirement for providers to post a notice on how to report incidents. Facility reports are posted online.
- **Robust intake process –** The state has a robust intake process, which includes a requirement for assignment to a social services specialist or registered nurse for additional research if the report contains an allegation of abuse, neglect, financial exploitation or concerns regarding care and services.
- **Program and cross-agency collaboration** – The state has regular quarterly collaboration meetings between RCS, APS, HCA, and operating agencies for the 1915(c) and 1115 HCBS programs. The state also has at least biweekly meetings that bring together the welfare system, DDA, ALTSA, and HCA. The State Medicaid Director (SMD) is highly involved in the collaboration meetings and efforts across agencies. The state even created a devoted position within the agency for multisystem collaboration.
- **Focus on reducing the length of hospital stays –** The state is developing approaches to reduce the amount of time individuals remain in the hospital. In Region 1, the acute hospitals email the Area Agency on Aging (AAA) to identify the person's case worker. If the individual is new to the system, they are assigned a caseworker. This involves the caseworker right way so they can help the individual move out of the hospital and return home or into an HCBS residential setting. Additionally, AAA caseworkers meet weekly, where they work together to strategize how to help individuals with conditions, such as dementia or other behavioral health needs.
- **Mortality review processes –** Both the DDA and ALTSA populations have mortality review processes.
    - The DDA mortality review team conducts reviews of all deceased individuals that received Medicaid services. For individuals who received HCBS services, there is a team of nurses that conduct the review following specified timeframes. They provide a written report to the regional quality assurance staff.

- For individuals who received services from ALTSA, there may be a mortality (after event) review completed by APS consistent with state statute.

- **Provider best practices –** From provider and participant visits, CMS and ACL identified several best practices utilized by the providers interviewed:
  - One provider uses a laminated card that has all information on critical incident reporting (phone numbers, contact information, etc.). Each provider carries this card with their ID badge.
  - One provider has monthly "abuse checks" where the provider discusses different scenarios of critical incidents with individuals to help people understand how to respond and what the incidents might look like (how to identify incidents).
  - ALTSA requires providers to post information on how to report incidents and phone numbers to call.

V. State Challenges

The following is an overview of the challenges identified by the H&W SR team regarding the design or practice of ensuring the health and welfare of HCBS participants in Washington.

- **Lack of knowledge on how to report incidents** – Even though the state has well developed policies, protocols and procedures for reporting incidents, stakeholders and participants reported that they were not aware of how or to whom to report critical incidents. It is unclear if all direct service providers are familiar with critical incident reporting requirements.
  - During a provider visit, CMS spoke with a registered nurse who did not appear to know the process for critical incident reporting. This provider entity also provides the state mandated caregiver training.
  - Access to information on how to report and who to report to is often not readily available.
  - Stakeholders reported that some participants do not have access to a phone or internet to report critical incidents or privacy to make a phone call.
  - When participants do have access to a phone, sometimes the hotline or complaint number is the company complaint line for the provider or facility owner, not the Complaint Resolution Unit (CRU) or an independent entity.
  - Information on reporting may not be posted or routinely reviewed with participants.
  - Participants have reported being afraid to report for numerous reasons, including fears of provider retribution and that the investigator will not validate the report.
  - Participants reported a lack of case management, not having a case manager, or are not aware of who their case manager is.

- **Participant and stakeholder concerns about participant protections during incident investigations –** When investigating incidents, participants, advocates, and the LTC Ombuds expressed concerns related to the failure to substantiate complaints and protections for the participants. Participants and advocates noted that, without corroborating evidence, reporters of incidents are not believed. According to the LTC Ombuds and their representatives, if the investigator did not witness an incident, they consider the incident to not have occurred. Findings that fail to confirm the complaint leave the participant feeling abandoned and at risk both for continuation of the harm and

with fear of retaliation for reporting. The DD Ombuds gave the example, of a complaint about neglect where there was no failed practice, yet the investigator failed to note the participant was hospitalized and died on the day of the investigation. There was no information as to the reason for hospitalization or cause of death. In another incident, the LTC Ombuds provided cases of residents being left in soiled incontinence supplies and catheter bag not being changed. These complaints were investigated with no failed practice identified.

The state provided CMS with additional information on 2/14/2024. Consistent with their initial dialogue with the summary report, CMS encourages the state to continue to meet with the DD Ombuds to provide updates and share any potential gaps in reporting critical incidents that may remain.

The state noted that its complaint investigation backlog has decreased significantly across all of their programs. Between January 1, 2023, and January 1, 2024, Residential Care Services reduced the backlog in their HCBS programs by approximately 60%. RCS has also assured that all immediate jeopardy or imminent harm complaints were addressed within the 2 working day timeline regardless of backlog.

- **Delays in remediating incidents –** For remediating licensing incidents, once an incident is substantiated or a problem is identified by RCS, provider actions to remedy the problem may be delayed due to the lack of plans of correction. It appears there are no clear consequences for providers who do not implement remedies until the next follow up visit which could be weeks or months out. For example, an adult family home was cited in January 2023 with a requirement to attest that the problems would be addressed by a certain date. The state conducted a follow-up visit in March 2023, found uncorrected deficiencies which led to civil fines. The state issued further citations in June 2023 and again the deficiencies were not corrected as indicated after follow-up visit in August 2023. The state waited two months to resolve the issues related to medication, bed rail assessment, use of personal protective equipment (PPE) among others. It is not clear if RCS has a system to evaluate the effectiveness of attestation as compared to requesting a detailed plan of correction.
- **Backlog of identified licensing incidents –** During the record review meeting with the RCS, they noted a backlog of licensing visits that could include health and welfare related citations. RCS also noted that there is an 18-24 month backlog of investigations still to be investigated that are not immediate jeopardy. Despite this backlog, they report terminating the use of contractors that supplemented the effort to resolve the backlog. The backlog is causing delays in investigating newly reported incidents, other than immediate jeopardy. CMS recognizes the state has a process in place to clear the backlog, but the timeline potentially allows for critical incidents to remain unresolved for long periods of time.
- **Undefined protocol for suspicious deaths in licensed settings –** Regarding mortality reviews, while DDA has a mortality review policy and practice, mortality reviews are unclear when a suspicious death occurs in a licensed setting. Reporting of suspicious deaths to the medical examiner does not appear to be consistent across settings and oversight programs (DDA, APS, RCS).

- **Ombuds concerns related to hospitalization of participants for extended periods of time –** Both the DD Ombuds and LTC Ombuds identified issues related to the hospitalization of participants for extended periods of time when there is no medical need, and because they are in a hospital setting, they may be subject to restraints. These participants are often transferred from licensed settings, such as assisted living or adult family homes and the providers will not permit them to return to their residence. Both Ombuds note that unnecessary hospital stays, which restrict access to the community, may not be recorded in the incident management system.
- **Concerns raised by the DD Ombuds regarding the Community Protection Program (CPP) –** The DD Ombuds raised significant concerns related to the violation of rights of participants in the CPP.
    - Referrals to the CPP often come from case managers and, according to the DD Ombuds, are based on observations or second or third hand information that the person may be a risk to the community which can lead to inconsistency in what triggers the onset of a CPP referral and persons being labeled once on the CPP.
    - Concerns were raised about blanket restrictions including restrictive procedures that exclude CPP clients and participants' access to technology and communication devices not allowing a method for filing complaints.
        - During CMS' site visit with a CCP participant in their home, it was observed that the participant was allowed to have a cell phone.
        - Further discussions with the state on this topic clarified that the state is working to ensure restrictions are in place based on the individual and defined in the person-centered plan. If a specific issue to the contrary is raised, they will act to appropriately update the individual's defined restrictions.
    - Some goals to graduate from the program are unfair and unrealistic, for example no sexual thoughts, no cussing, and no aggression.

VI. Recommendations and Next Steps for Washington

CMS appreciates the state's participation in the H&W SR and would like to provide recommendations that would enhance the state's ability to safeguard health and welfare in HCBS waiver programs.

- Develop a process to ensure and monitor that all participants are made aware of how to report critical incidents. This could include additional training for providers, case managers, and participants. The information should include the methods for reporting (phone, online, etc.), who to report to i.e., CRU and APS, how soon to report an incident and what to expect when reporting i.e., leaving their name and address or facility name, and the problem. Monitoring could also include feedback from participants through consumer experience surveys, focus groups, etc.
- When the referral is from the LTC Ombuds or DD Ombuds consider their observations as evidence of the failed practice and seek to corroborate their observations through other interviews, record reviews and other data such as facility fiscal records, as appropriate.

- Review the effectiveness of attestations as it relates to health and welfare related citations identified by RCS. Ensure that these attestations are being resolved timely and ongoing health and welfare issues are remediated. CMS is available to assist the state in developing performance measures (PMs) to monitor and report incidents with regards to the rate of attestation verses issue resolution.
- Utilize resources to expedite the clearing of RCS backlog of licensing visits and health and welfare related citations. One potential solution is to reinstate use of a contractor to help process the backlog and shorten 18-24 month period for clearing it.
- Standardize the reporting of suspicious deaths to the medical examiner across settings and oversight programs (DDA, APS, RCS).
- Use meetings with the DD Ombuds and LTC Ombuds to better communicate issues and recommendations and develop solutions, particularly for issues related to the ALTSA waivers and the Community Protection program.
- Work with the DD Ombuds to identify individual person-centered plans and provider practices in the CPP that can be reviewed to determine whether the use of restrictive practices is aligned with waiver requirements, including the HCBS Settings Rule and person-centered service planning.
- To address the improper eviction and discharge concerns and the lack of landlord/tenancy protections raised by the LTC Ombuds, the H&W SR team will share the information with the CMS settings team for further consideration.
- To address the CPP concerns raised by the DD Ombuds, CMS met with state while onsite to discuss the concerns raised related to unrealistic goals and improper restrictive interventions. The state was asked to discuss its process steps to ensure adherence to waiver requirements, including the HCBS Settings Rule and person-centered service planning. During this discussion, the state noted it is actively engaged in working with waiver participants through its person-centered planning process to address the identified concerns. CMS will continue to focus on these issues through the quality oversight process while supporting the state in its efforts to ensure goals and restrictions are appropriate.

Attachment A

Washington's Home and Community Based Services Programs

Waiver Name and Number	Expiration Date	Operating Agency	Target Population
Residential Support Waiver (1086)	December 2028	Department of Social and Health Services/Aging and Long-Term Support Administration (DSHS-ALTSA)	Adults who are aged (65 and over) or aged 18-64 with physical disabilities.
New Freedom (0443)	December 2024	Department of Social and Health Services/Aging and Long-Term Support Administration (DSHS-ALTSA)	Adults who are aged (65 and over) or age 18-64 with physical disabilities
COPES (0049)	December 2028	Department of Social and Health Services/Aging and Long-Term Support Administration (DSHS-ALTSA)	Adults who are aged (65 and over) or aged 18-64 with physical disabilities
Children's Intensive In-Home Behavioral Support (40669)	August 2027	Department of Social and Health Services/Developmental Disabilities Administration (DSHS-DDA)	Children aged 8-20 with an intellectual or developmental disability and/or Autism Spectrum Disorder
Individual and Family Services (IFS) (1186)	August 2024	Department of Social and Health Services/Developmental Disabilities Administration (DSHS-DDA)	Participants of all ages with an intellectual or developmental disability and/or Autism Spectrum Disorder
Community Protection Waiver (0411)	August 2027	Department of Social and Health Services/Developmental Disabilities Administration (DSHS-DDA)	Adults ages 18 and over with an intellectual or developmental disability and/or Autism Spectrum Disorder
CORE Waiver (0410)	August 2027	Department of Social and Health Services/Developmental Disabilities Administration (DSHS-DDA)	Participants of all ages with an intellectual or developmental disability and/or Autism Spectrum Disorder
Basic Plus (0409)	August 2027	Department of Social and Health Services/Developmental Disabilities Administration (DSHS-DDA)	Participants of all ages with an intellectual or developmental disability and/or Autism Spectrum Disorder